IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3298 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAJI SULEMAN ADAM KHASWALA HIGH SCHOOL

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 3298 of 2000

MR SHIRISH JOSHI for Petitioner No. 1

Mr. LR Poojari, AGP for Respondent No. 1-2

RULE SERVED BY DS for Respondent No. 1-2

MR VH DESAI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 24/03/2004

ORAL JUDGEMENT

Heard Mr. Shirish Joshi, ld. advocate appearing for the petitioner, Mr. Poojari, ld. AGP appearing for respondents No. 1 and 2, and Ms. Sejal Sutaria on behalf of Mr. V.H. Desai, ld. advocate appearing for

respondent No.3. In the present Special Civil Application, the petitioner has challenged the order passed by the District Education Officer, Anand, respondent No.1 herein, dated March 31, 2000 by which the respondent No.1 did not approve the appointment of one Shri Ilias Vora as Junior Clerk and also ordered 25% grant-cut from the maintenance grant to be paid to the petitioner school for the year 1999-2000. This Court while admitting the aforesaid Special Civil Application on 2.7.2001 has also granted interim relief in terms of Para 17(B), i.e. staying further implementation and operation of the impugned order dated March 31, 2000 passed by the respondent No.1 and the said order is in operation till date.

2. The facts leading to the filing of the present petition are as follows. That the petitioner-School is a minority institution and run by the minority Trust. That there were two posts of Peons in the petitioner-school and one Mustak Vora, who is respondent No.3 was serving as a Peon and Shri Ilias Vora was also serving as a Peon. However, said Mustak Vora was senior to the said Ilias Vora.

3. That the post of Junior Clerk had fallen vacant and therefore the said post was required to be filled-in. Apprehending that the said Mustak Vora will not be appointed/promoted to the post of Junior Clerk, the said Mustak Vora, respondent No.3 herein had approached Gujarat Secondary Education Tribunal at Ahmedabad by way of Application No. 218 of 1999 challenging the action of the petitioner and the Trust in not giving him promotion to the post of Junior Clerk. In the said application, the petitioner and the Trust as well as the respondent No.1 District Education Officer, Anand had appeared. It was contended on behalf of respondent No.3 herein in the said application that he is the Senior-most Peon and he should be promoted to the post of Junior Clerk. On the other hand, it was contended on behalf of the petitioner School as well as the Trust that as it is a minority institution the institution is not bound to promote the respondent No.3 herein as a Junior Clerk. Accepting the same argument, the Gujarat Secondary Education Tribunal had by its judgment and order dated 5.11.999 dismissed the said application by holding that the petitioner being a minority institution it is not bound to promote the respondent No.3 herein. That thereafter the respondent No.3 herein, Mustak Vora had also moved a Review Application No. 549 of 1999 which also came to be rejected by the Tribunal by order dated 9.2.2000. That thereafter the petitioner and the Trust had decided to

fill-up the post of Junior Clerk by way of direct recruitment and therefore applications were invited by giving advertisement in local newspapers on 19.12.1999 and interview was fixed on 5.3.2000. It is the case of the petitioner that inspite of the judgment and order passed by the Tribunal dated 5.11.1999 passed in Application No. 218 of 1999, the D.E.O., with a view to favour the respondent No.3, passed an order dated March 2, 2000 restraining the petitioner from holding interview on 5.3.2000 and to see that the post of Junior Clerk is filled in by way of promotion. It is the case of the petitioner that the said order dated 2nd March 2000 was served upon them on 3rd March 2000 and as the interviews were to be held on 5.3.2000 it was not possible for the petitioner to inform all the candidates and therefore they had no other option but to continue with the interviews on 5.3.2000. That in the said interview the respondent No.3 Mustak Vora and the said Ilias Vora had also participated and appeared before the Interviews Committee and on merits the said Ilias Vora came to be appointed by the petitioner as a Junior Clerk. That thereafter the respondent No.1 has passed the impugned order dated 31st March 2000 by which the respondent No.1 has not approved the appointment of Ilias Vora as Junior Clerk, as according to him the post of Junior Clerk was to be filled in by way of promotion as per Government Resolution dated 22.10.1999. As the said post is filled in by way of direct recruitment the said appointment is contrary to the aforesaid resolution. That he has also further passed an order with regard to grant-cut of 25% of the grant, as T inspite of the order dated 2nd March 2000 the management has proceeded further with the interviews and appointed Ilias Vora. That the order is the subject of the present Special Civil Application. That in the present SPecial Civil Application the respondent No.3 who was not a party had also moved application being C.A. No. 11143 of 2001 for joining as a party which came to be allowed by this Court and therefore respondent No.3 is a party to the proceedings. Apart from the merits, the petitioner has submitted that the impugned order passed by respondent No.1 dated 31st March 2000 is passed in flagrant violation of principles of natural justice as before passing the impugned order dated 31st March 2000 no opportunity of hearing has been given to the petitioner nor the petitioner was served with any show cause notice to show cause why the appointment of Ilias Vora be not disapproved and why there cannot be any grant-cut, and therefore the impugned order dated 31st March 2000 is required to be quashed and set aside. Mr. Joshi, ld. advocate appearing on behalf of the petiitoner has made his submissions on merits also

challenging the impugned order dated 31st March 2000 but in view of the fact that the impugned order dated 31st March 2000 is passed without giving any opportunity of being heard to the petitioner and as it entails civil consequences, I am not entering into the merits of the case at this stage.

4. On the other hand, Mr. Poojari, ld. AGP appearing on behalf of respondents No. 1 and 2 has submitted that the impugned order date 31st March 2000 is just and proper and in accordance with law and as Ilias Vora was appointed to the post of Junior Clerk contrary to the GOvernment Resolution dated 22nd October 1999 and the post of Junior Clerk was to be filled in only by way of promotion, the respondent No.1 is right in not approving the appointment of Ilias Vora. He has also further submitted that inspite of the order dated 2nd March 2000 passed by the D.E.O., the petitioner No.1 continued with the interview process and did not stop the interviews and therefore the respondent No.1 DEO is justified in passing the order of 25% grant-cut. Ms. Sejal Sutaria, appearing on behalf of Mr. V.H. Desai, ld. advocate for respondent No.3 has submitted that their client Mustak Vora is already appointed as a Junior Clerk by Resolution dated 15.4.2001 subject to the outcome of the present Special Civil Application and therefore the appropriate order be passed to protect his services.

5. So far as appointment of respondent No.3 as a Junior Clerk as alleged by the respondent No.3 is concerned, that is not the subject matter of the present Special Civil Application and therefore also dealing with the same in the present Special CIvil Application filed by the petitioner challenging the order passed by respondent No.1 no relief can be granted in favour of respondent No.3 and even otherwise also while dealing with the submissions in the present Special Civil Application it cannot be granted.

6. I have heard the ld. counsel appearing for the parties. The present Special Civil Application is required to be allowed only on the ground of violation of principles of natural justice. Before passing the impugned order dated 31st March 2000 not approving the appointment of Ilias Vora as Junior Clerk and imposing penalty of 25% grant-cut, no opportunity of being heard was given to the petitioner nor show cause notice was issued to show cause as to why appointment of Ilias Vora as Junior Clerk be not approved and why there should be any grant-cut. It is also pertinent to note that even before passing the impugned order not approving

appointment of Ilias Vora as Junior Clerk, even the said Ilias Vora was also not heard. Apart from the merits of the case, when an order is passed against a person which entails civil consequences, a bare minimum requirement is that a reasonable opportunity of being heard is to be given to the concerned person. In the present case, as stated above, before passing the impugned order dated 31st March 2000, no opportunity of being heard is given to the petitioner.

7. Under the circumstances, the impugned order dated 31st March 2000 is required to be quashed and set aside and is hereby quashed and set aside, reserving liberty to the respondent No.1 to pass an appropriate order in accordance with law after hearing the petitioner and concerned persons inclusive of respondent No.3 and said Ilias Vora. Accordingly, the impugned order dated 31st March 2000 is quashed and set aside. With the above observations, Rule is made absolute accordingly with no order as to costs.

rmr. [M.R. Shah, J.]